



**Written Submission of the
Austrian Disability Council
on Austria to the Pre-sessional
Working Group of the
UN Human Rights Committee**

**Submitted on the occasion of the 141st
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of the Human Rights Committee**

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The submission at hand is mostly based on documents from the Austrian Disability Council, the umbrella organization of over 85 Member Associations representing approximately 1.4 million persons with disabilities in Austria. These documents were elaborated in participatory formats with persons with disabilities and their organizations. In addition, experts from various fields including persons with disabilities contributed to the civil society report providing their expertise.

In the process of preparing this submission, the Austrian Disability Council has been supported by the International Disability Alliance and the VertretungsNetz, whose collaboration is acknowledged and very much appreciated.

Austria ratified the International Covenant on Civil and Political Rights (ICCPR) on 10 September 1978 and the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 26 September 2008. The human rights standards of the ICCPR and the CRPD intersect and reinforce each other when it comes to the civil and political rights of persons with disabilities. This submission will cover articles 2, 3, 4, 7, 9, 10, 14, 17, 19, 20, 23, 25, 26 and 50 of the ICCPR.

The Austrian Disability Council welcomes the opportunity to contribute to the review process by the Human Rights Committee by providing additional information on the ICCPR implementation regarding individuals with disabilities in Austria.

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Constitutional and legal framework within which the Covenant is implemented (art. 2)

In Austria all UN treaties have been ratified with a general reservation, which means that the treaties are not directly applicable. To attain legal validity, its content must be transformed into national law, i.e. it must be published as a law or enshrined as a legal provision. This legal positivism, the adherence to codified law, obviously deprives the human rights treaties of their genuine meaning and more importantly of their application. Austrian jurisprudence merely considers international treaties for interpretation of Austrian law upon request. In legal practice, this does generally not happen which means that the treaties have actually no practical impact.

This issue was also highlighted by the ICCPR Committee in their concluding observations from December 2015 regarding Austria. The Committee stated its concerns "*that the Covenant is not directly applicable in the State party and that the courts do not interpret domestic law in the light of the Covenant*". The Committee recommended that judges and law enforcement officers receive adequate training to apply and interpret domestic law in the light of the Covenant.¹

To this day, Austria has not implemented these recommendations despite the ICCPR Committee's urging, failing to ensure that all rights protected under the Covenant are given full effect in domestic law.

The same point was made by the Committee of the CRPD, which stated its concerns about the effective implementation of the Convention and recommended the State party to enact domestic legislation providing for the judicial enforcement of all individual rights or to rescind its fulfilment reservation.

This means that presently, Austrias inhabitants, including those with disabilities, cannot directly invoke all their civil and political rights guaranteed under the Covenant. This, of course, is subject to criticism, as reflected in the concluding observations of the respective committees.

National Human Rights Institutions

The Austrian Ombudsman Board protects and promotes human rights and monitors places of deprivation of liberty, including facilities and programmes for persons with disabilities. While we welcome the Austrian Ombudsman Board's role in protecting and promoting human rights, it is important to note that the institution is not fully aligned with the Paris Principles, the UN General Assembly 48/134, 20 December

¹ Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 2 (5, 6).

1993 and Council of Europe Resolution 97, 30 September 1997 since the Board members are nominated by political parties represented in the Parliament.

This aspect was highlighted as a concern in the Concluding observations of 2015, emphasizing the necessity for full transparency and political independence within the Austrian Ombudsman Board to bring it in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).²

Regrettably, despite the passage of time, this situation persists unchanged as of the year 2024.

Proposed Questions:

- What steps are being taken to ensure that professionals at all levels of the government, in particular those of judicial administration, develop more knowledge and expertise on civil and political rights?
- What specific actions or initiatives are being implemented to ensure that the Austrian Ombudsman Board fully aligns and upholds the principles outlined in the Paris Principles, which emphasize independence, effectiveness, transparency, and accountability in the functioning of national human rights institutions?

Federalism (art. 50)

Another major challenge in the implementation of human rights treaties in Austria derives from the destructive handling of the federalist system. In Austria, the federal government shares its power with the governments of nine provinces, federal states. Especially problematic is the fact that the federal states and municipalities do not see themselves as (primary) responsible parties for implementing the obligations set out in the ICCPR.

The split competences between the federal government and the federal states hinder sustainable changes and improvements, which lead to incoherence and differing levels of rights protection, also for persons with disabilities, depending on in which federal state each persons' residency lies.

There are no endeavours to develop a harmonized strategy of the federal states. The federal system is regularly used as a justification for not fully implementing the human rights conventions. The attempts by the federal government and the federal

² Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 3 (9).

states to overcome this situation are rare and minimal, resulting in weak and varied levels of protection of human and especially disability rights across the federal states.³

Proposed questions:

- What steps are being taken to ensure that the ICCPR is implemented across Austria, including at the federal states?
- How can Austria effectively share responsibility among federal and state governments regarding the implementation of human rights treaties, particularly concerning non-discrimination and disability rights?

Equality and non-discrimination (arts. 2 (1), 3 and 26)

As underlined by the Committee, non-discrimination together with equality before the law and equal protection of the law constitute basic and general principles of human rights law.⁴ As stated by the Committee in paragraph 12 of its general comment No. 18 (1989), the Covenant not only protects against discrimination with respect to the rights provided therein (art. 2), but it also prohibits discrimination in law or in fact in any field regulated by law and protected by public authorities (art. 26). This means that when States parties adopt laws, even relating to rights that are not protected by the Covenant, they must comply with the principle of equality and the prohibition of discrimination as set down in article 26.⁵

It is important to mention that while disability is not explicitly listed as a prohibited ground of discrimination under the Covenant, it is sufficiently encompassed by the reference to "other status".

In Austria, the intersection between gender and disability is rarely considered in today's policies. Gender and disability are two aspects that are often overlooked in the discourse on equality and social justice, and it is important to recognize this intersectionality appropriately. This lack of recognition leads to violations of human rights, especially for women with disabilities. The compounded discrimination faced

³ This issue was also highlighted in the concluding observations on the combined second and third periodic reports of Austria by the Committee of the CRPD, in the context of last year's state review. The Committee is "concerned about the wide variety of different legislative approaches, including, but not limited to widely different concepts of disability". The Committee – recalling its previous recommendations – "encourages Austria to amend and align its laws, at the federal level and at the level of the federal states". (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 2 (10).)

⁴ General Comment No. 18: Non-discrimination (Thirty-seventh session 1989), Human Rights Committee, (1).

⁵ Zwaan-de Vries v. Netherlands, communication No. 182/1984 (CCPR/C/29/D/182/1984), para. 12.4.

by women with disabilities, due to both their gender and disability, is evident yet challenging to monitor, as these discriminations are often left unreported.

Actions against discrimination

The Ombud for Equal Treatment, which is a national authority and part of the Federal Chancellery with the task of enforcing the right to equality and equal treatment, is the competent authority on all grounds of discrimination except for disability. In case of multiple discrimination, women with disabilities must file a request for arbitration at the Sozialministeriumservice (Service point of the Ministry of Social Affairs). This arbitration procedure is mandatory and must be carried out at the Sozialministeriumservice before a case can be brought before the civil court. A point of criticism here is that the Sozialministeriumservice does not have any specific expertise on women with disabilities, nor is it trained in a gender-sensitive approach.

The Austrian Disability Council is not aware of any additional programs or concrete steps to prevent multiple and/or intersectional discrimination against women and girls with disabilities since the last State review.

Furthermore, there is still no transparent, comprehensive gender perspective in disability legislation and its enforcement, nor a disability perspective in women's legislation and its enforcement. While the Federal Disability Equality Act requires that multiple discrimination must be considered when determining the amount of compensation for violation of the prohibition of discrimination, there are no systematic measures to prevent multiple discrimination. However, such measures are indispensable when it comes to, among others, women, children, elderly people, migrants and LGBTQI+ persons with disabilities.

Moreover, multiple discrimination against persons with disabilities plays only a marginal role in Austrian disability policy. While the first National Action Plan on Disability 2012-2020 (NAP 2012-2020) did not contain a single measure on the issue of multiple discrimination, the new National Action Plan on Disability 2022-2030 (NAP 2022-2030) contains three measures (out of a total of 375).⁶

Additionally, the Federal Equal Treatment Act in Austria fails to afford equal protection against all forms of discrimination and there is a lack of protection against discrimination on the basis of religion and belief, age, sexual orientation and gender identity in gaining access to goods and services. This aspect was also criticized by the respective Committee in 2015 in their concluding observations regarding Austria. The Committee recommended to consider amending the Equal Treatment Act, the Employment of Disabled Persons Act, the Equality of Disabled Persons Act and

⁶ Nationaler Aktionsplan Behinderung 2022-2030, Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz; This issue was also highlighted by the CRPD committee in September 2023, where it is stated that Austria must adopt effective and specific measures to prevent multiple and intersectional forms of discrimination against women and girls with disabilities.

relevant federal state laws, with a view to ensure equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination in the private and public sector.⁷

However, despite being under negotiation in Austria since 2010, there have been no changes to this issue, even after the recommendations made in 2015.

Proposed question:

- Please provide information on measures taken to ensure equality and prevent multiple forms of discrimination against women and girls with disabilities and to mainstream a gender perspective in disability-related legislation and policies, and a disability perspective in its legislation and policies concerning women.
- What measures are in place to ensure that the recommendations from the respective Committee from 2015 regarding the anti-discrimination framework are being implemented?

Discriminatory education-system

In general, there is a lack of political will to implement a fully inclusive education system in Austria, which leads to discrimination of pupils with disabilities. In its 2019 report, the Court of Audit also criticizes the insufficient implementation of inclusive approaches.⁸

According to § 8 Para. 1 of the Compulsory Education Act 1985 children with special educational needs who are required to attend school may in theory choose between special educational schools or special education classrooms. However, the law restricts the choice to the extent that such inclusive classrooms are available and that the journey to them is reasonable. Due to the lack of such classes in comparison to special education schools, many children with special educational needs have no real choice but are forced to segregated education. During the school year 2020/21, 5.1% of all pupils in mandatory education in Austria had special educational needs. 36.4% of these pupils are still being taught at one of the 287 special education schools in Austria or in special education classrooms. This rate has barely changed in recent years; there is still no real inclusive education yet.⁹

In addition, in Austria there is no guarantee for children with special educational needs to attend the eleventh and twelfth school year. Although most applications are

⁷ Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 3 (11, 12).

⁸ Bericht des Rechnungshofes, Inklusiver Unterricht: Was leistet Österreichs Schulsystem? (2019), 11ff, [Bericht des Rechnungshofes: Inklusiver Unterricht: Was leistet Österreichs Schulsystem?](#) (last accessed: 02/05/2024).

⁹ Bericht des Rechnungshofes, Inklusiver Unterricht: Was leistet Österreichs Schulsystem? (2019), [Bericht des Rechnungshofes: Inklusiver Unterricht: Was leistet Österreichs Schulsystem?](#) (last accessed: 02/05/2024).

approved, however, these approvals are often limited to specific outsourced parts of existing schools and offer morning classes only.

Moreover, as it stands, children and adolescents with learning difficulties and cognitive disabilities continue to be largely excluded from education after the mandatory period of schooling. According to a circular sent out by the Ministry of Education, only pupils with a physical disability and a care level higher than 5 receive personal assistance when attending a federal school. The first, and so far, only judgment following a class action suit has now legally confirmed that this provision is discriminatory.¹⁰ As a result of the class action suit, the Minister of Education revoked this discriminatory circular. Despite small improvements in the area of personal assistance, Austria is still far from achieving an inclusive education system.¹¹

In general, further educational trainings in all educational levels are not inclusive and do not approach the intersectional challenges of women with disabilities. For those few, who achieve the tertiary level, there are no specific scholarships for women with disabilities, resulting in high dropout rates and forced over performance.

Proposed question:

- Please provide information on measures to provide pupils and students with disabilities with the support they require within the mainstream education system, and to continue training teachers and all other educational and non-teaching staff to accommodate quality inclusive educational settings, on an equal basis with children without disabilities.

Equal access to the labour market

The Committee noted the low representation of women in high level and managerial positions and on boards of private enterprises.¹² The Committee's observations highlight the discrimination against women in employment. This results in an additional layer of discrimination experienced by women with disabilities.

Women with disabilities often fulfil caregiving roles but there is a lack of personal assistance in caregiving roles in Austria, which can limit their employment options. As a result of exhausting their resources on caregiving duties without sufficient personal assistance, women with disabilities are forced to part-time work and are predominantly employed in low-paid, specifically female professional fields and at

¹⁰ Bildungsminister muss Persönliche Assistenz in Bundesschulen auf alle Kinder und Jugendliche mit Behinderungen ausweiten, Österreichischer Behindertenrat (2023), [Bildungsminister muss Persönliche Assistenz in Bundesschulen auf alle Kinder und Jugendlichen mit Behinderungen ausweiten | Österreichischer Behindertenrat, 26.04.2023 \(ots.at\)](#) (last accessed: 02/05/2024).

¹¹ Klagsverband: Bildungsminister hebt diskriminierendes Rundschreiben auf, Erlass bringt Verbesserungen für Schüler*innen mit Behinderungen, [Klagsverband: Bildungsminister hebt diskriminierendes Rundschreiben auf, Erlass bringt Verbesserungen für Schüler*innen mit Behinderungen - BIZEPS](#) (last accessed: 03/05/2024).

¹² Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 3 (13).

lower hierarchy levels. Poor education outcomes result in limited training and job prospects, intensifying the challenges encountered by women with disabilities. Consequently, women with disabilities are highly vulnerable to poverty and social exclusion.

Overall, it's important to recognize that there aren't targeted initiatives addressing the unique challenges of women with disabilities, who experience multiple layers of discrimination. The Public Employment Service (AMS) offers no specific further educational trainings, which encourage women with disabilities in STEM areas¹³ nor offers part time trainings, so that women with disabilities could participate.

Proposed question:

- What measures have been adopted by the State party to effectively combat discrimination of women with disabilities in employment and in the labour market?

Violence against girls and women with disabilities

As a direct result of the underlying multiple discrimination, women with disabilities at all stages of their lives are especially exposed to the dangers of potential acts of violence against their physical integrity. Women and girls with disabilities, and particularly those with intellectual disabilities, often become victims of violence and are twice as much affected from sexual assaults than women without disabilities.¹⁴ Disabled women and girls who are dependent on certain assistance (e.g. for their personal hygiene) or on overall personal assistance to conduct their lives, often get into states of dependence that are accompanied by sexual violence. According to a recent study, women with intellectual or psychosocial disabilities emerge as the most heavily impacted group by violence. In addition, men with disabilities experience sexual violence significantly less frequently than women with disabilities. Moreover, their encounters with violence typically occur in public spaces rather than within the confines of the family.¹⁵

Some criticism is levelled at police procedures because the threat situation is often not correctly assessed due to a lack of awareness. Additionally, there is an insufficiency in measures to establish effective gender-based violence protection.¹⁶

¹³ Science, technology, engineering and mathematics.

¹⁴ Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen, Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, 2019, 37, [Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen \(sozialministerium.at\)](#) (last accessed: 03/05/2024).

¹⁵ Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen, Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, 2019, 38, [Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen \(sozialministerium.at\)](#) (last accessed: 03/05/2024).

¹⁶ Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 3 (19, 20). The Committee of the CRPD recommended that Austria needs to ensure that women and girls with

Proposed questions:

- What steps are being taken to address the heightened risk for women and girls with disabilities of becoming victims of violence, abuse, exploitation, and harmful practices?
- What measures have been adopted to ensure that both, supporting services and information thereof are accessible to victims of gender-based violence?
- How are police and other interlocutors trained on responding to the victims of gender-based violence needs?

Forced Sterilization

In theory, forced sterilization is prohibited and punishable under the Austrian Criminal Code.

In addition, the following applies to sterilization: If, in the opinion of a doctor, a patient has the capacity to make a decision in a specific case (the doctor determines this capacity) and has reached the age of 25, only the patient him- or herself can consent to sterilization after having been informed accordingly.¹⁷

If the patient is deemed incapable of making a decision, sterilization requires the consent of an adult representative (or a health care proxy) whose scope includes this matter.¹⁸ However, consent to sterilization (or castration) by a representative may be given only if there is otherwise a threat to life or a risk of serious harm to health or severe pain because of permanent physical suffering. In addition to the consent of a representative, authorization by a court is required.¹⁹ The procedure must be in the person's own health interest and the least invasive way preventing a pregnancy in the specific case.

Since July 2018, it has also been mandatory to appoint the locally competent adult protection association and two separate and independent experts if consent is about to be given by an adult representative.

To this date there are only very few cases in which such adult protection associations have been entrusted with this role. This suggests that only a few cases of planned sterilization are brought before the courts and that such procedures generally continue to take place without the intended consulting.

disabilities, including women and girls with disabilities still in institutions, have effective access to prevention and protection mechanisms against gender-based violence. (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 3 (20).

¹⁷ Austrian Civil Code, section 252 para. 1

¹⁸ cf. *ibid.*, section 253 para. 1.

¹⁹ cf. *ibid.*, section 255 para. 1 & 2.

The Austrian Disability Council has been notified that sterilizations of women and girls with disabilities are still taking place in Austria, even without their consent. According to statements, they are often administered contraceptives without their knowledge or consent (especially in institutions), which is not sterilization, but is nevertheless a massive violation of independence and bodily integrity.²⁰

Presumably, there are still cases of unreported forced sterilization, since there seems to be insufficient information for relatives and doctors and a lack of accessible sexual education measures as well as counseling and referral services for women with disabilities on the topic of sexuality, contraception and self-determination.

Proposed questions:

- Please indicate the measures taken to abolish the forced (without their consent) sterilization of women and girls with disabilities, and to ensure accessible information about sterilization procedures and the protocols in place.
- Which comprehensive guidelines have been established for hospitals and care facilities to provide accessible counselling on sterilization and its implications?

Public emergency risk management (art. 4)

Austria's general reservation has also led to a failure to implement Art. 4 ICCPR. This means Austria doesn't guarantee that during a public emergency threatening the nation's life, no measures will be taken that go against its other international obligations or that would be discriminatory.

This is due to the widespread lack of consideration of persons with disabilities in emergency risk management at the federal, regional, and municipal levels.²¹ Contrary to the requirements of the Sendai Framework, persons with disabilities and

²⁰ This issue was also highlighted by the Committee of the CRPD in the concluding observations, where it was stated that "*Sterilization of women and girls with disabilities without their consent, apparently outside the confines of sections 253-255 of the Austrian Civil Code, have taken place in the State Party*". (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 6 (43).

²¹ As an example of the lack of consideration of persons with disabilities by the regions, reference should be made to Salzburg, whose guidelines for disaster management plans do not contain a single statement on persons with disabilities or accessibility, although the purpose of these guidelines is the "uniform design and completeness of disaster management plans" at the district and municipal level. (Verordnung der Salzburger Landesregierung vom 15. Juni 1982, mit der Richtlinien für die einheitliche Gestaltung und Vollständigkeit der Katastrophenschutzpläne erlassen werden, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000401> (last accessed: 02/05/2024).

their organizations were not or insufficiently involved in the development of any emergency risk management.²²

Proposed question:

- How can it be ensured that potential public emergency risk management, derogating from the obligations under the present Covenant, is not discriminatory?

Inhuman or degrading treatment and free consent (arts. 7, 9 and 10)

As stated by the Committee in its general comment No. 20 (1992), article 7 protects both the dignity and the physical and mental integrity of an individual. State parties should protect individuals against torture or cruel, inhuman or degrading treatment or punishment, whether inflicted by people acting in their official capacity, outside that capacity or in a private capacity, through legislative and other measures. The Committee highlights regularly that all those deprived of their liberty are entitled to be treated with humanity and respect for their inherent dignity.²³

Regarding Austria, the Committee stated its concerns as follows: "*deficiencies in medical and mental health care in places of detention, including for persons with intellectual or psychosocial disability and older persons in correctional institutions, which are due to shortcomings in health-care staffing levels and adequate training and have resulted in cases of neglect*".²⁴

However, the situation has not improved yet. Despite ongoing concerns and recommendations from the Committee regarding the deficiencies in medical and mental health care within places of detention in Austria, particularly for vulnerable populations such as persons with intellectual or psychosocial disabilities and older individuals.²⁵

²² Sendai Framework for Disaster Risk Reduction 2015 – 2030 (2015), United Nations, https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf (last accessed: 02/05/2024).

²³ General Comment No. 20: Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Forty-fourth session 1992), Human Rights Committee.

²⁴ Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 5 (23).

²⁵ On January 1st, 1975, the Criminal Code came into force in Austria, which introduced the so-called preventive measures for mentally ill offenders to complement penalties (fines and imprisonment). Accordingly, persons who had committed an offence under the (significant) influence of a mental disorder were to be placed in special, dedicated institutions (now: forensic therapeutic centers) and treated accordingly. These measures were to be carried out in dedicated facilities.

Until the commence of operation of the required institutions, placements under Section 21 (1) of the Criminal Code were to be carried out in public health institutions (psychiatric wards) and those under Section 21 (2) of the Criminal Code in other institutions or in specific departments of the prisons. To this day, these special institutions still do not have sufficient capacity, so that around half of all placements are still carried out somewhere else.

Criminal detention (system of preventive measures connected to imprisonment)²⁶

The number of placements of offenders with severe and persistent psychosocial disabilities has almost tripled in the last 20 years and currently stands at 1,410 persons (around 15% of all penal system inmates as of April 1st, 2024). The steadily increasing number of persons placed within the penal system is offset by a shortage in many areas - there is a lack of prison officers, social and psychiatric service staff, psychiatrists and therapists. In total, only 70% of the intended positions are filled. In the area of psychiatry and psychotherapeutic medicine, for example, only around half of the positions were staffed as of 1.1.2023.²⁷

The psychiatric, psychological, and social work treatment and care is inadequate in both the penal system and the system of preventive measures connected to imprisonment. There is also a lack of suitable, low-threshold extramural facilities for prevention and aftercare. Austria continues to invest in the expansion of existing prisons and special institutions (e.g. expansion of the forensic-therapeutic centers in Asten and Göllersdorf) instead of developing community-based, low-threshold models (small-scale facilities based on the Italian model) for the execution of sentences and measures.

The shortcomings in this area of the penal system have various reasons, resulting in ongoing and continued violations of fundamental rights and freedoms and have already led to two judgments against Austria from the European Court of Human Rights, ECtHR²⁸. Despite numerous reform proposals and complaints, a comprehensive reform has not yet taken place.

After a long lead time, a law to reform the enforcement of measures was passed in the National Council at the end of 2022, which came into force on March, 1st2023 (Maßnahmenvollzugsanpassungsgesetz 2022). Apart from linguistic adjustments and a substantive legal innovation (temporary waiver of enforcement), however, this reform has hardly brought any changes in practice. The repeatedly announced second, comprehensive part of the reform has been postponed again and, according to the Federal Ministry of Justice, will follow later.

At the same time, Austria continues to deny the incompatibility of the regime of the Austrian system of preventive measures connected to imprisonment with UN law and argues that criminal placement is compatible with the provisions of the CRPD.

²⁶ The Austrian system of preventive measures connected to imprisonment is in contradiction to the CRPD and the Committees guidelines on Art 14 CRPD.

²⁷ Steuerung und Koordinierung des Straf- und Maßnahmenvollzugs; Follow-up-Überprüfung, Rechnungshof Österreich, 2024, [Bericht des Rechnungshofes: Steuerung und Koordinierung des Straf- und Maßnahmenvollzugs; Follow-up-Überprüfung](#) (last accessed: 02/05/2024).

²⁸ Lorenz v Austria, 20.07.2017 - 11537/11; Kuttner v Austria, 16.07.2015 - 7997/08.

However, this is in clear contradiction to Art 14 CRPD and the Committee's 2015 guidelines, according to which a deprivation of liberty based on a person's disability is absolutely inadmissible. Austria's argumentation, which attempts to justify admissibility, is unconvincing and disregards the provisions of the CRPD.²⁹

Besides, the Committee of the CRPD referred to its guidelines and recommended in its concluding observations once again, to abolish all provisions that permit coercive treatment or deprivation of liberty due to impairment, as well as measures for support decision-making in closed institutions and the active involvement of organizations of persons with disabilities in the development of these measures.³⁰

Furthermore, some of the problems mentioned above are also reflected in the regular penal system, such as excessive inmate numbers, a lack of resources/staff in the prison guard and in the area of psychosocial and therapeutic care for prisoners. In practice the lack of resources in the penal system increasingly leads to placement in system of preventive measures connected to imprisonment, which, however, suffers from the same deficiencies.

Proposed questions:

- Despite repeated calls from numerous national and international experts, the recommendation to exclude individuals detained under Section 21 (1) of the Criminal Code (offenders who are incapable of reason) from the penal system and to ensure their care and treatment within the social and health care system has not been implemented. What steps are being taken to execute the system of preventive measures connected to imprisonment in accordance with Art 14 of the CRPD?
- What concrete measures are being taken by Austria to ensure appropriate medical and therapeutic care and treatment - both inside and outside the penal system?
- What concepts of de-institutionalization exist in the area of the penal system and the system of preventive measures connected to imprisonment, how are they financed and when can they be expected to be implemented?

²⁹ e.g. In this regard the Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or to others. This practice is incompatible with article 14 as interpreted by the jurisprudence of the CRPD committee. It is discriminatory in nature and amounts to arbitrary deprivation of liberty. Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, The right to liberty and security of persons with disabilities, Adopted during the Committee's 14th session, held in September 2015.

³⁰ Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3).

Coercive measures in stationary hospitalization - excessive restraints and other measures in the psychiatric context

In Austria, 770 people are admitted to psychiatric wards against their will on average per day. This occurs when medical doctors assess that there is a danger to the person concerned or to other people. In 2023, around 34% of patients were affected by a "further restriction of freedom of movement" as part of their accommodation. This figure has risen sharply since the start of the COVID-19 pandemic and has not fallen since.

On average, people admitted to psychiatric wards across Austria stay in hospitals for 11.3 days. However, they have been discharged more and more quickly in recent years. This trend continued in 2023. For example, 56.6% of forced placements were lifted after 5 days.

There is a worrying trend for children and young people: the number of forced placements for minors has risen massively by almost 20% to 2,673 since the COVID-19 pandemic. At the same time, the average duration of accommodation is falling - and in some cases very significantly. In particular, Vienna stands out in the evaluations. While the length of stay for children and adolescents has fallen from 12.1 days (2022) to 7.4 days (2023) in just one year, the proportion of young patients who were accommodated five or more times during a calendar year has increased by almost 27%.³¹

However, it needs to be highlighted that those high numbers of forced placements are also a reflection of the lack of suitable out-of-hospital options beforehand. Currently, there is a general shortage of psychiatrists in Austria. According to the Austrian Medical Chamber (as of April 2023), there are approximately 1.700 psychiatrists nationwide (individuals, not full-time equivalent positions).³²

Regarding practices for child and adolescent psychiatry, a recent article summarized the situation as follows: With the beginning of the COVID-19 pandemic, there has been a significant increase in inquiries, leading to even longer waiting times (averaging 3-6 months for an initial appointment) in practices. These extended waiting times contribute to a deterioration in the symptoms. Furthermore, the study assumes that there is currently a shortage of 112 contracted positions for this field nationwide in Austria.³³

³¹ Neue Daten zu Unterbringung in der Psychiatrie, VertretungsNetz, 2024, [VertretungsNetz: Neue Daten zu Unterbringungen in der Psychiatrie | VertretungsNetz, 15.04.2024 \(ots.at\)](#) (last accessed: 02/05/2024).

³² Engpass in der Psychiatrie, Ärzte Exklusiv, [Facharztausbildung: Engpass in der Psychiatrie – ÄRZTE EXKLUSIV](#) (last accessed: 06/05/2024).

³³ Die aktuelle Situation der kinder- und jugendpsychiatrischen Versorgung in Österreich im niedergelassenen Bereich, D. Koubek, H. Krönke, A. Karwautz (neuropsychiatrie), 2022, 160, [s40211-022-00437-w.pdf](#) (last accessed: 03/05/2024).

Proposed questions:

- What measures are being taken to end the number of involuntary placements?³⁴
- What measures are being taken to ensure the security, further development, and expansion of psychosocial prevention and care structures in all federal states, particularly the expansion of community-based, mobile, and outpatient care structures to ensure minimal waiting times and easily accessible services?
- What initiatives have been launched to promptly and sustainably address the significant shortage of specialist psychiatrists, especially in child and adolescent psychiatry?
- What measures have been and are being taken to ensure the appropriate staffing and funding for inpatient and outpatient care?
- In what way and to what extent (per federal state) are experts and peers involved in training and treatment - inpatient and outpatient? What measures are being taken to promote and strengthen peer work in psychiatric and outpatient facilities?

Choice of residence (art. 12)

To this day, Austria was not able to provide any precise and comprehensive information on effective measures taken to ensure adequate funding for persons with disabilities to exercise their right to choose their place of residence and live independently.³⁵

Due to the prevailing federalism (see above under art. 50), support services (personal assistance, funding, partially assisted living) are organized very differently in the federal states. As a result, people with disabilities can see themselves forced to live in certain federal states and must restrain from moving to another part of the country as they would otherwise not receive the support they need.

Moreover, there are no exact figures on how many persons with disabilities have been placed in residential homes for older people in Austria. According to reports from the Austrian Ombudsman Board, there are, in fact, persons with disabilities under the age of 60 living in nursing homes because institutions for persons with

³⁴ To be in line with the position of the CRPD.

³⁵ UN-Behindertenrechtskonvention Zweiter und dritter Staatenbericht Österreichs, Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (2019) 65-69.

disabilities are usually not equipped for people requiring a high level of care and rarely have continuously employed nursing staff.³⁶ It is important to highlight that in those care institutions, only basic fundamental needs (nutrition, hygiene and accommodation) are being met, however, there is no focus on self-determination. There is an urgent need for the state to obtain reliable data and take appropriate measures to provide adequate care for young people with disabilities, thus enabling them to live independently according to their own wishes.

Austria has the urgent need to recall its guidelines on deinstitutionalization and to disassemble institutional settings and to ensure that persons with disabilities receive adequate support for living within the community.³⁷

Proposed question:

- Please provide information on measures taken, including the provision of adequate funding, to enable persons with disabilities to enjoy their right to freely choose their residence.

<h2>Freedom of opinion and expression (arts. 14 and 19)</h2>
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As stated by the Committee in its general comment No. 34, State parties must protect the right to hold opinions without any interference, coercion, exception, or restriction. The Committee has constantly called upon member states to protect all forms of expression, for example spoken, written and sign language. In addition, the right to access information encompasses information held by public entities. Therefore, State parties should take proactive measures to disclose information of public interest and strive to facilitate easy, timely, efficient, and practical access to such information.³⁸

In Austria, Austrian Sign Language is recognized as an independent language through Art 8 para 3 Federal Constitutional Law. However, there is still a lack of transforming and implementing this constitutional right into general law and practice.³⁹

³⁶ Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, Volksanwaltschaft (2014), 31, [imfname_401787.pdf \(parlament.gv.at\)](#) (last accessed: 02/05/2024).

³⁷ Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 6 (43).

³⁸ General Comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34), Human Rights Committee (2011).

³⁹ The Committee of the CRPD recommended as well that Austria needs to acknowledge Austrian Sign Language in education and effectively implement it as a language of instruction in schools and a subject to be taught. (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 10 (57).

The provision of translations into Austrian Sign Language is not yet guaranteed across all public services. Even though Federal Bureaus and legally regulated service providers are responsible for offering interpretation services in sign language⁴⁰, reality looks different. The entitlement to medical treatment does not include interpreting services.⁴¹ There are also no standardized regulations and no legal entitlements for assuming the costs of sign language interpretation services in the federal states. Furthermore, there are no regulations for assuming the costs of writing assistants for hearing-impaired persons without competencies in Austrian Sign Language.

In general, deaf people have the right to be assigned a language interpreter during legal proceedings. However, they do not have the right to choose the interpreter themselves; instead, the interpreter is appointed by the court. In practice, courts only appoint one interpreter. This results in a massive deterioration in quality (more mistakes) during proceedings that last for several hours because the interpreter cannot take breaks, even though this would be necessary to maintain focused while interpreting.

Another point of criticism is that there are no court decisions in Easy Language, and only a few federal states (e.g. Upper Austria) issue administrative decisions in Easy Language. Furthermore, braille is not offered. Also, not all courthouses are physically accessible.⁴²

Overall, there is a massive shortage of sign language interpreters in Austria, as evidenced by a study, which the Austrian government cited themselves.⁴³ To counteract this shortage, the National Action Plan on Disability 2022-2030 (NAP 2022-2030) has stipulated a measure for training more sign language interpreters.⁴⁴ However, concrete steps in this regard are unknown.

As a result, these circumstances severely limit the rights of individuals with disabilities to freedom of expression and access to information.

⁴⁰ See Section 8 para 2 Federal Disability Equality Act. These public service providers would be, e.g., the Public Employment Service, social insurance institutions, etc.

⁴¹ Social insurance institutions predominantly make use of the services of their contracting partners. Some of these partners possess sign language competencies. According to the Viennese Medical Association, only 16 out of more than 6,000 medical practitioners provide services in sign language.. Thus, there are hardly any services for deaf persons. (<http://www.praxisplan.at/>, last accessed: 02/05/2024).

⁴² UN-Behindertenrechtskonvention Zweiter und dritter Staatenbericht Österreichs, Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (2019) 53ff. This issue was highlighted by the Committee of the CRPD as it recommends in its concluding observations that Austria needs to ensure the availability of qualified sign language interpreters in administrative and court proceedings and to provide administrative and court decisions in accessible formats and render online administrative and court hearings accessible. (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 5 (34). 4

⁴³ UN-Behindertenrechtskonvention Zweiter und dritter Staatenbericht Österreichs, Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (2019) 38ff.

⁴⁴ Nationaler Aktionsplan Behinderung 2022-2030, Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz, 64.

Proposed questions:

- What measures and steps are being taken at the federal level to ensure procedural accommodations, such as sign language interpretation and accessible document formats, in various proceedings, including court proceedings, and how is the implementation of these accommodations safeguarded in law and practice, including funding and the existence of potential legal remedies?
- How is the Austrian government addressing the need for sign language interpretation not only in legal proceedings but also across various spheres of life, such as education, healthcare, and public affairs, and what efforts are being made to effectively implement Austrian Sign Language as an official language, ensuring consistent financing and approach throughout the federal states?

Respect for privacy (art. 17)

In Austria, there are notable concerns regarding the autonomy of individuals with disabilities who reside in institutional settings and wish to pursue personal relationships, particularly same sex relationships. This issue often arises due to a lack of privacy within these institutional environments and the potential interference by both staff members and legal representatives. In order to address these issues, it is important to prioritize the safeguarding of the fundamental right to privacy and the ability for individuals with disabilities to make independent choices regarding their own intimate relationships, thereby ensuring their sexual self-determination while residing in institutional settings.⁴⁵

In addition, children and adolescents with disabilities often cannot live with their families because families do not receive sufficient support to enable children with high support needs to stay with them. There is a lack of individualized, needs-based support. The focus of child and youth welfare should be shifted towards supporting families. Instead of out-of-family placements, there is an urgent need for mobile services and personal assistance for children.

In Austria, data on persons with disabilities in general and children with disabilities in particular is very imprecise.⁴⁶ Detailed data on the financial and other resources

⁴⁵ Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 9 (53).

⁴⁶ Bericht der Bundesregierung über die Lage der Menschen mit Behinderungen in Österreich, Bundesministerium für Arbeit, Soziales und Konsumentenschutz, 2016, 158, 239ff, [Bericht der Bundesregierung über die Lage der Menschen mit Behinderungen in Österreich 2016 \(sozialministerium.at\)](https://www.sozialministerium.at/Dateien/Datei/Bericht-der-Bundesregierung-ueber-die-Lage-der-Menschen-mit-Behinderungen-in-Oesterreich-2016) (last accessed: 03/05/2024).

invested in the deinstitutionalization of children with disabilities is not available. It can be assumed that the level of institutionalization of children with disabilities remains very high. In general, there is a lack of awareness on the institutionalization of children with disabilities in Austria.⁴⁷

Proposed question:

- What measures are being implemented to ensure the protection of the right to private life, including sexual self-determination of persons with disabilities still living in institutions, to prevent interference by personnel and legal representatives?⁴⁸

Prohibition of advocacy of discriminatory hatred (art. 20)

The ICCPR Committee raised its concern that hate speech on the Internet and online forums is on the rise.⁴⁹ The image that most of the Austrian society has of persons with disabilities is still heavily influenced by prejudices and stereotypes. They are often reduced solely to their disabilities and even the term "disabled" is still widely used as an insult.

People with disabilities frequently find themselves targeted by hate speech on various online platforms. The prevalence of such incidents is difficult to quantify accurately due to underreporting, with many cases going unrecorded.

Proposed questions:

- Which appropriate measures to develop and implement long-term, broad campaigns, including social media campaigns, to raise awareness and promote the positive image of persons with disabilities in Austria amongst government personnel, the media, the public and families with an emphasis on self-empowerment are taken to reduce discriminatory hatred?

⁴⁷ Stellungnahme De-Institutionalisierung, Unabhängiger Monitoringausschuss zur Umsetzung der UN-Konvention über die Rechte von Menschen mit Behinderungen, 2016, 12, 14, [MA SN DeInstitutionalisierung final.pdf \(monitoringausschuss.at\)](https://www.monitoringausschuss.at) (last accessed: 03/05/2024).

⁴⁸ Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 9 (54).

⁴⁹ Human Rights Committee, International Covenant on Civil and Political Rights, Concluding observations on the fifth periodic report of Austria 2015 (CCPR/C/AUT/CO/5) 3 (15).

Right to marry and family life (art. 23)

In Austria, there is currently no legislation that safeguards individuals with disabilities from discrimination in exercising their right to marry and establish a family.⁵⁰ Prejudices and false beliefs hinder the right of individuals with disabilities to marry and establish a family.

In addition, individuals with disabilities who are under adult or court-appointed representation are unable to exercise their right to marry without the consent of their legal representative.⁵¹

Proposed Question:

- What measures are being taken to ensure that Austria recognizes the right to marry for all persons with disabilities based on their personal consent?⁵²

Protection of children (art. 24)

According to the Committee's general comment No. 17, State parties are obliged to ensure the protection of all children without discrimination based on their status as minors. Moreover, the Committee consistently called upon member states to ensure special measures to protect children who are deprived of their family, ill-treated or neglected, so that they can develop under conditions that most closely resemble a family.⁵³

However, in Austria, children with disabilities continue to experience inequality and discriminations in many areas of life. Examples include the still predominantly segregated education in special education schools and institutional placement of children with disabilities. It can be assumed that the level of institutionalisation of children with disabilities remains very high. In general, there is a lack of awareness on the institutionalization of children with disabilities in Austria. In addition, there are still institutions or group homes exclusively for children and adolescents with

⁵⁰ as outlined in Art 23 CRPD.

⁵¹ This issue was also highlighted by the CRPD committee where they recall the urge to recognize the right to marry of all persons with disabilities based on their personal consent. (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 10 (56).

⁵² Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 10 (56).

⁵³ General Comment No. 17: Article 24 (Rights of the Child) (Thirty-fifth session 1989), Human Rights Committee.

disabilities and there is a tendency to disguise the actual size of institutions by dividing large residential buildings into several group homes with smaller groups.

Proposed questions:

- What measure are being taken, including the provision of support services, to assist families, including both, parents with disabilities, and persons in the family who are the lead caregivers in their care for children with disabilities and to prevent separation of children from their families?
- Please provide information on the number of children with disabilities not living with their families, including those placed in institutions, and detailed data, including the financial and other resources invested, on measures taken to ensure the deinstitutionalization of children with disabilities.

Right to participate in public life (art. 25)
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The right to vote

In 2023, there was a reform of the electoral law in Austria, which entered into force on 1.1.2024. The reform includes several improvements for people with disabilities, for example polling stations must be barrier-free by 2028. To make it easier for people with disabilities to participate in elections during the transitional period until 1.1.2028, the law provides the mandatory installation of at least one accessible polling station in every building in which polling stations are set up.

However, this transitional solution does not take into account that polling stations do not just have to be reachable in an accessible way, also their use must be accessible: they ought to be equipped with accessible toilets and fully accessible voting booths and offer extensive support services.

While, e.g., persons with visual impairments can largely vote in an accessible way with the help of templates, voting in Austria is still only accessible to a limited extent for most persons with disabilities.

Accessible voting information

Therefore, another point of criticism is the fact that the reform does not contain any measures for provisions of accessible voting information, which is mandatory to ensure equal access to the right to vote for all.⁵⁴

There are also no permanent and effective measures of political education for persons with intellectual disabilities. Additionally, many people with sensory impairments or cognitive disabilities have few opportunities to obtain up-to-date information on national and international political events. Overall, daily political information is not fully accessible, even less so is election-specific information. Moreover, election advertising is not accessible and election programs are hardly accessible at all.

Participation of persons with disabilities

Evidently, there's a predominant focus on structural accessibility. To meet the requirements of the ICCPR and to grant people with disabilities real participation in political life, it is not enough to simply amend the electoral regulations. Participation in both the active and passive right to vote can only be possible if all electoral processes, including election advertising and information in the run-up to the election are barrier-free and comprehensive support services are offered during the election.⁵⁵

Additionally, persons with disabilities are extremely underrepresented in political offices in Austria. Advocacy Groups and Self-Advocacy Organizations of persons with disabilities are funded based on subsidies. Funding is not guaranteed by law which also results in financial uncertainties. Recommendations of self-advocacy groups usually remain unnoticed; they often feel as if they were not taken seriously by politicians and that they do not receive enough legal support.⁵⁶

Proposed questions:

- What measures are being implemented to ensure full accessibility and comprehensive support for individuals with disabilities in voting, including the provision of information on how to vote as well as on the election campaigns in accessible formats, to safeguard their personal voting rights?

⁵⁴ This issue was also highlighted by the Committee of the CRPD. It stated that voting and election procedures (the active right to vote) are not fully accessible in Austria. Moreover, it mentioned that Austria needs to ensure that voting and election procedures are fully accessible for persons with disabilities, starting with training of election officials, party officials and members of civil society organizations and by providing voting information in accessible formats such as Easy Language, Austrian Sign Language, Austrian Sign Language PLUS (Easy Austrian Sign Language), digital formats and/or braille. (Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Austria 2023 (CRPD/C/AUT/CO/2-3) 13 (68).

⁵⁵ General Comment No. 25: General Comments under Article 40, 1996 (CCPR/C/21/Rev.1/add.7), 12.

⁵⁶ Protocol of the National Information Day about the UN Convention, Vienna, 30 November 2009.

- Please provide further information on measures taken to ensure that the voting process is fully accessible to all persons with disabilities, and that voting, and information thereon is provided in all accessible formats.
- What steps are being taken to ensure the continuity of self-advocacy work (self-advocacy and advocacy groups) considering various factors such as constant financial support by the Federal Government or the federal states as well as their inclusion in all measures that are relevant to them at an early stage?
- What steps are being taken to empower individuals with disabilities in political participation, encompassing political education, encouraging the aspiration to hold public offices, and sustaining self-advocacy initiatives with consistent financial backing and early involvement in relevant measures?